Supreme Court of the United States

October Term, 1944

No. 811

LEO H. HILL and UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS AND STEAM-FITTERS OF THE UNITED STATES AND CANADA, LOCAL NO. 234,

PETITIONERS,

vs.

STATE OF FLORIDA ex Rel.
J. TOM WATSON, Attorney General

On Writ of Certiorari to the Supreme Court of Florida

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

THE OPINION OF THE COURT BELOW

The opinion of the Supreme Court of Florida is reported in 19 So. (2d.) 857, and is found in the record herein on page 26.

STATEMENT OF THE CASE

Respondent accepts the Petitioners' Statement of the Case. Respondent deems it proper here to call to the attention of the Court the fact that the trial court in its final decree (Record 18) by authority of Section 16, Chapter 21968, Laws of Florida, Acts of 1943 (hereafter referred to as House Bill 142) judicially excised from Section 4 of the

act the words "and are of the opinion that the public interest requires that a license or permit should be issued to such applicant," which final decree was affirmed by unanimous decision of the Supreme Court of Florida (Record 26).

STATE STATUTE INVOLVED

Sections 4 and 6 of House Bill 142 are directly involved in this proceedings. The determination of the validity of Sections 4 and 6 brings into consideration Sections 2(2), 9(6), 11, 14, 15 and 16 of the act. Attached to the Petition for Writ of Certiorari and Brief in support thereof, filed herein, as Appendix B thereof, is a copy of House Bill 142. For convenience here, copy of the title and Sections 1, 2, 4, 6, 9(6), 11, 14, 15 and 16 of the act is attached as an appendix hereto; and any reference in this brief to such sections of the act shall be understood to carry with it reference to the appendix hereto.

SUMMARY OF ARGUMENT

I.

Section 4 of House Bill 142 which requires a "business agent" of a labor organization to make application to and receive from the Licensing Board therein provided a license or permit, represents a lawful exercise of the police power of the State of Florida in its regulation of a business. The nature of the activities of such a business agent reasonably demands regulation. The requirements of Section 4, with respect to application for and issuance of such license or permit, are reasonable, and no appreciable discretion with respect thereto is lodged in said Licensing Board. Since the activities regulated are those related to the issuance of membership or authorization cards, work permits and any other evidence of rights granted or claimed

in, or by, a labor organization, and the soliciting or receiving from any employer any right or privilege for employees, there is no infringement of constitutional rights under the First and Fourteenth Amendments to the United States Constitution.

Section 6 which requires that every labor organization annually file with the Secretary of State its name, the location of its office, and the address of its president, secretary, treasurer and business agent, imposes no previous general restraint upon the right of working people to assemble and function through labor organizations. Labor organizations vitally affect the public, and their power and control reach into most phases of our life. The registration required is nothing beyond a mere identification requirement, is for the benefit of the public in general and the members of such organizations. Further, Section 11 of the act providing for suits by and against labor organizations and service of process upon them, is to be read in conjunction with Section 6. This latter section in no way interferes with the rights of members of a labor organization to solicit members, nor does it limit the right of the organization to solicit members, disseminate any information, peaceably to assemble and petition. The filing of the annual report is not by the act made a condition precedent to the existence or functioning of a labor organization.

II

The fact that Sections 4 and 6 are applicable only to labor organizations and not to associations of employers and other associations, and that there is exempted from the provisions of the act all railway labor organizations and members thereof as long as they are regulated by any act or acts of Congress, are not such as to render Sections 4 and 6 unlawfully discriminatory. A state may classify with reference to an evil to be prevented and, if the class

discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. The state may direct its law against that which it terms the evil as it actually exists without covering the whole field of possible abuses. Furthermore, it would seem that it was the intent of Congress in large part, if not entirely, by the Railway Labor Act, 455 Stat. 1185, 45 U.S.C.A., Secs. 151-188, to preempt the field covered by the salient provisions of the statute.

III

Sections 4 and 6 do not deprive Petitioners of any rights under the National Labor Relations Act. The Federal Act was not designed or intended to preclude a state from enacting legislation limited to the regulation of the type of union activities contemplated by House Bill 142. It would seem, further, that this question was concluded in the recent decision of this Court in the case of Thomas vs. Collins, decided January 8, 1945, October Term, 1944, No. 14.

IV

Section 4 is not so ambiguous as to deny due process of law. The definition of "business agent" in Section 2(2) of the act is clear and unequivocal, and, it is submitted, the definition is in exact accord with what everyone who has any knowledge of or dealings with labor union activities understands the term to mean, particularly labor union members.

ARGUMENT

I

Petitioners' First Specification of Error is as follows:

Sections 4 and 6 and the Injunctions Issued Thereunder Impose a Previous General Restraint Upon and Prohibit the Exercise of Civil Rights Granted Under the First Amendment and Protected Against Infringement By the State Under the Fourteenth Amendment.

A. GENERAL STATEMENT

The respondent maintains no error was committed by the Supreme Court of Florida in upholding the validity of Sections 4 and 6, as charged in the above specification of error.

The trial court and the Supreme Court of Florida found Sections 4 and 6 of House Bill 142 valid legislation, qualifying such finding, however, by deleting from Section 4 the following words: ". . . and are of the opinion that the public interest requires that a license or permit should be issued the applicant. . . ." The Supreme Court of Florida, in sustaining Sections 4 and 6, with the noted excision, premised such findings on the following statements in its opinion (Record 26):

> "Similar regulations (i.e., those required by Section 4) are imposed on attorneys, physicians, barbers, insurance agents, real estate brokers, nurses, beauty parlor operators, civil engineers, architects, liquor dealers and many others engaged in gainful occupations. All such requirements have been upheld in the interest of public health, morals, safety, welfare and prosperity of the people. They are imposed on the theory that the business engaged in by the applicant vitally affects the public welfare and that the public is entitled to the protection they afford. . . . Labor unions, like other trade, professional and business organizations, are concerned with the business of making a living. They do not bother themselves with the things that concern re-

> ligious bodies, chambers of commerce and like institutions. It is on this basis we say they are subject to police power. . . . The point is that labor organizations so vitally affect the public that they may be regulated in like manner as other organizations likewise engaged and their business agents may be subject to like regulation as insurance agents, real estate brokers, and others engaged in occupations that affect the public."

The theory found in the above utterances is the theory of this respondent; and to sustain such theory, this brief is addressed.

B. POLICE POWER OF THE STATES

The state under its police power has the right to regulate almost every type of enterprise, trade, occupation and profession in order to protect the public health, welfare and morals. Gundling vs. Chicago, 177 U.S. 183, 188; Watson vs. Maryland, 218 U.S. 173, 176; Sligh vs. Kirkwood, 237 U.S. 52, 59; Eubanks vs. Richmond, 226 U.S. 137, 142; Schmidinger vs. Chicago, 226 U.S. 578, 587; Camfield vs. U.S., 167 U.S. 518, 524; State vs. Lawrence, 213 N.C. 674, 197 S.E. 586, Certiorari denied 305 U.S. 638. For exercise of this right as related to voluntary associations, see New York vs. Zimmerman, 278 U.S. 63, 71, 72; and also as related to local problems thrown up by modern industry, see American Federation of Labor vs. Swing, 312 U.S. 321, 325; Borden, et al., vs. Sparks, 54 Fed. Supp. 300.

C. POWER AND DUTY OF THE STATE

The state is primarily the judge of regulations required in the interest of public safety and welfare. Graves vs. Minnesota, 272 U.S. 425, 428; Gitlow vs. N.Y., 268 U.S. 652, 668. The discretion of the legislature is very large in the exercise of the police power, both in determining what the public interests require, and measures and means necessary

to protect such interests. Louisville & Nashville R. Co. vs. Kentucky, 161 U.S. 677, 701; Sterling vs. Constantin, 287 U.S. 378, 398-399. The judgment of the highest court in the state is entitled to acceptance unless clearly not well founded. Jones vs. City of Portland, 245 U.S. 217, 221, 222. These are manifestly matters with respect to which local authorities have peculiar facilities for securing accurate information. Jones vs. City of Portland, supra.

Under the authority of National Labor Relations Board vs. Jones, 301 U.S. 1, the Supreme Court of the State of Florida took judicial notice of the activities of labor unions and that "it would be difficult to name an organization that more vitally affects the public, or one in which the public is more vitally interested" (Record 29).

In line with the above decision of the Florida Court, it should not be forgotten that labor unions are autonomies whose powers and controls are great. Those powers and controls now reach into most phases of our economic life. Many working men in order to follow their trades and crafts and earn a livelihood, find it expedient, desirable, or necessary to join a union. Under the Wagner Act and the extending administrative policies and powers of the National Labor Relations Board, many employers have no choice except to deal with the unions and their representatives. The economic contests between employer and employees have never concerned merely the immediate disputants. The clash of such conflicting interests inevitably implicates the well-being of the community. We must be mindful, therefore, that the rights of employers and employees to conduct their economic affairs and to compete with others in the share of products of industry are subject to modification or qualification in the interests of the society in which they exist. Carpenters' and Joiners' Union vs. Ritters Cafe, 315 U.S. 722, 724.

Florida is not by any means the only state that is undertaking to regulate labor unions by state legislation,

as witness the following from the opinion of the Supreme Court of Florida (Record 30): " . . . our attention is directed to acts by at least eleven other states, Alabama, Kansas, Arkansas, Wisconsin, South Dakota, Idaho, Texas, Michigan, Pennsylvania, Massachusetts and Minnesota regulating some phase of labor relations."

Such concerted action evidences a deep-seated conviction as to the need for regulation in this field and as to the means to be adopted to meet such need. Such legislative response urges the conviction that these regulations cannot be regarded as arbitrary or capricious; and the legislature is entitled to its judgment. West Coast Hotel Company vs. Parrish, 300 U.S. 379, 399; Tigner vs. Texas, 310 U.S. 141, 145-146.

D. SECTION 4 IS A VALID REGULATION OF THE ACTIVITIES OF A "BUSINESS AGENT" OF A LABOR ORGANIZATION

Attention is directed to the definition of the term "business agent" and the activities to bring one within such term, as set forth in Section 2(2) of the act. Such section provides that the term "business agent," when used in the act, shall mean any person "who shall for a *pecuniary or financial consideration* act or attempt to act for any labor organization in (a) the *issuance* of membership or authorization cards, work permits or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in *soliciting* or *receiving from any employer* any right or privilege *for employees*."

We agree with Petitioners that the activities mentioned in the preceding paragraph are not limited to the solicitation of funds. We submit, however, that labor organizations, their formation and operation, and admission to membership therein, inevitably contemplate that when membership or authorization cards or work permits are issued, the recipient thereof shall immediately or mediately

be required to pay initiation or other fees. Moreover, there is involved in these activities the exercise of authority and power by a "business agent" which transcend any mere collection of money. Such activities involve the desire of persons to work as members of labor unions, and whose right to thus work, and oftentimes to work at all, is dependent upon a "business agent" exercising his authority to issue, withhold, or condition the issuance, of authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor union. The right of members of a labor organization to bargain with their employer in relation to conditions of work, hours, wages and settlement of grievances is recognized; and the utmost of good faith is required of a "business agent" who assumes to solicit or receive from an employer such rights and privileges. The power and authority which might be exercised by a "business agent" with respect to these rights are evident. The damages which reasonably might be suffered by those who would work as members of a labor union as result of coercion, venality or bad faith of a "business agent" requires no strain of the imagination or elaboration; and it is no argument that such a "business agent" is supposed to function only as authorized by the organization he represents.

Florida has lawfully exercised its police power to regulate those engaged in numerous businesses and pursuits, among whom are lawyers, accountants and insurance agents. The opportunity for fraud or bad faith, and resulting injuries on the part of an unscrupulous "business agent" with respect to those he would serve or represent and the public in general, is at least on a parity with the incidence of injuries occasioned by the fraud or bad faith of an unscrupulous lawyer, accountant, or insurance agent; and it is apparent a "business agent" is afforded more opportunity to exercise coercion than is afforded a lawyer, an accountant or an insurance agent.

These facts, together with the mentioned intimate relationship of labor organizations to the public welfare, were obvious to the Florida Legislature when it enacted House Bill 142. Section 4 thereof creates a State Licensing Board composed of the Governor, Secretary of State and Superintendent of Public Instruction. Business agents of labor organizations must secure a license or permit from this board by virtue of Section 9(6) of the act, and as a prerequisite to securing said license the applicant must show: that he has been a citizen and resident of the United States for ten years, has not been convicted of a felony, and is of good character. The applicant must also show his authority for making application to represent his labor organization. For service rendered in issuing a license or permit, the board is authorized to charge a fee of $1.00 to defray the cost of the service.

Petitioners have not charged these standards are unreasonable; nor have they been denied any rights because these standards have been invoked against them. The record shows that the controversy in the case, in so far as Petitioner Hill is concerned, arose as result of such Petitioner ignoring said Section 9(6), which section renders it unlawful for any person to act as a business agent without having obtained a valid license or permit. Petitioners seek to justify the conduct of Petitioner Hill in ignoring Section 9(6) on the ground that said Section 4 is unconstitutional. Particularly as to this specification of error, their contentions are summarized as follows: (1) That Section 4 and the injunction issued thereunder deprive Hill of his "general right to solicit employees to join a labor organization"; (2) That Section 4 is a licensing statute, as distinguished from a mere identification requirement, vesting in the Licensing Board discretion unduly impairing Hill's civil rights; and (3) That there exists a difference between commercial solicitation and solicitation to join a lawful

movement, which latter right cannot be granted or withheld by the state.

Of the decisions cited by Petitioners in support of these contentions, attention is first directed to the recent case of Thomas vs. Collins, decided by this Court on January 8, 1945, October Term 1944, No. 14, and certain statements therein:

> "Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or idenfication requirement may be imposed. In that context such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct akin to the activities which were present and which it was said the state might regulate in Schneider vs. State, supra, and Cantwell vs. Connecticut, supra."

"The present application does not involve the solicitation of money or property." (Main opinion.)

> "No one may be required to obtain a license in order to speak. But once he uses the economic power which he has over other men and their jobs to influence their action, he is doing more than exercising the freedom of speech protected by the First Amendment." (Concurring opinion of Justice Douglas).

> "So the state to an extent not necessary now to determine may regulate one who makes a business or livelihood of soliciting funds or memberships for unions." (Concurring opinion of Justice Jackson).

The activities of a "business agent" as defined in House Bill 142 are not the activities of one who, as incidents to his exercise of his right of freedom of speech and assembly, solicits funds or takes subscriptions. They are not activities comparable to the distribution of religious or other literature. There is no relationship between these activities and rights involved in freedom of the press. Clearly

the *issuance* of membership or authorization cards, work permits and the rights granted or claimed in or by a labor organization, and the *soliciting* or *receiving of rights* from employers for employees, constitute *occupational activities* which the state in a valid exercise of its police power can regulate in a reasonable manner. Further, when it is considered that such "business agent" must be paid or salaried to come within the provisions of Section 4, it is apparent the statute operates solely to regulate occupational activities as distinguished from civil liberties; and any relationship such activities may have to freedom of speech, press and assembly is remote. Moreover, by no rule of statutory construction can Section 4 be construed to license or regulate one who, whether for compensation or not, solicits membership in any labor organization, by public speeches, private conferences, or in any other manner. We contend, also that the injunction issued by the trial court (Record 18) and affirmed by the Supreme Court of Florida (Record 26-35) in no way limits the right of Petitioner Hill to continue to solicit members for Local No. 234, or any other labor organization in the State of Florida.

If the activities contemplated by Section 4 are susceptible of regulation, and we submit they are, the requirements of Section 4 relative to issuance of license or permit are not unreasonable. With the excision of the part of this section noted, the requirements of the section are reasonable. Certainly there is nothing in this record to indicate arbitrary action of the Licensing Board. A mere registration for purposes of identification would not meet the requirements of the regulation demanded; for there is presented here the opportunity of a man "to use the economic power which he has over other men and their jobs." Thomas vs. Collins, supra. Further, the constitutional guaranty of free speech does not protect a man from an injunction against uttering words that may have all the effect of force. Gompers vs. Buck Stove & Range Co., 221 U.S.

418, 439; Schenck vs. U.S., 349 U.S. 47; Near vs. Minn., 283 U.S. 697, 716.

In view of the above, we contend that the other decisions upon which Petitioners rely are not applicable. Fiske vs. Kansas, 274 U.S. 380, and Herndon vs. Lowry, 301 U.S. 105, have no relationship to this case, dealing with insufficiency of evidence to support convictions under criminal statutes. Hague vs. C.I.O., 307 U.S. 495; Schneider vs. New Jersey, 308 U.S. 147; and Martin vs. City of Struthers, 319 U.S. 141, were all directed at specific, singular statutes or ordinances which prohibited distribution of literature or public assembly or speaking without a permit, issuance of which was in the *absolute discretion* of an administrative officer, *or prohibiting* the exercise of a civil right *in its entirety*. Follette vs. Town of McComick, 321 U.S. 573, and Murdock vs. Pennsylvania, 319 U.S. 105, involved a *licensing* tax and *not a nominal fee* to defray cost of license and service as required in the statute under attack in the case at bar. Near vs. Minnesota, 283 U.S. 697, related to the validity of a statue providing for abatement of publications regularly or customarily dealing in scandalous and defamatory matter.

On the authority of the foregoing, we submit that the Supreme Court of Florida did not err in holding that Section 4 (with noted excision) is a valid exercise of state police power.

E. SECTION 6 IS A VALID PROVISION OF LAW

Section 6 of House Bill 142 requires every labor organization operating in Florida to make a report in writing to the Secretary of State annually on or before July 1st showing: (1) The name of the labor organization; (2) The location of its office, and (3) The name and address of the president, secretary, treasurer and business agent.

Much of the argument made in behalf of Section 4 applies with equal force to Section 6. It seems settled that voluntary associations and corporations, either for or not for profit, may be required to furnish official information as to their identity in order that the public may have access to the same for many purposes. New York vs. Zimmerman, 278 U.S. 63.

Attention is directed to the fact that the requirements of Section 6 are reasonably related to the requirements of Section 4. One requirement of the latter section is that the application for license or permit shall be accompanied by a statement signed by the president and secretary of the labor organization for which applicant proposes to act as business agent. Section 6 provides a public file of all such organizations functioning in the state.

The requirements of Section 6 are reasonably related to Section 11 of the act. This latter section provides for suits by and against labor organizations, and specifies how service of process may be made on such an organization. The public record setting forth the name of the organization, its officers and business agents is reasonably designed and required to facilitate the exercise of rights under Section 11. Not the least of the reasons for the requirement that a voluntary association shall identify itself in the manner provided by Section 6 is to facilitate legal proceedings against it by persons aggrieved. New York vs. Zimmerman, supra. By analogy, reference is here made to the requirements that each corporation in Florida, domestic or foreign, must maintain in the office of Secretary of State of Florida designation of place for service of process upon it, and designation of agent upon whom service shall be made (Sections 47.34-47.36, Florida Statutes 1941), and to penalties for failure to comply with such requirements (Section 47.43, Florida statutes 1941). It is further noted that Section 11 of House Bill 142 is the only law in Florida dealing with service of process upon labor unions.

That the regulation is a reasonable one in light of the foregoing is evident; and it is further noted that Congress, in Section 112 of the Revenue Act of 1943, inserted a provision that labor organizations, although exempt from income tax, should file annual report with the Commissioner of Internal Revenue, disclosing items of gross income, receipts and disbursements, and such other information for the purpose of carrying out the provisions of that act, as the Commissioner may by regulation prescribe. Petitioners seek to distinguish between this Federal act and the requirements of Section 6:

> "Further, the difference between the effect of failure to comply with Section 6 of the Florida Act and failure to comply with the Revenue Act of 1943, Title 1, Section 1, 17(a), 58 Stat. 36, 26 U.S.C. 54(f), requiring labor organizations to file certain statements in respect to their income, should be noted. Failure to file under the Federal Act merely imposes penalties upon those individuals responsible for the filing (53 Stat. 28, 26 U.S.C. 54(a)(b)(d), and 53 Stat. 62, 26 U.S.C. 145); it does not operate as a forfeit of all rights of the membership to meet and to engage in discussion and dissemination of information for their economic protection and advancement as does the Florida Act."

The enforcement feature of the Federal Act is a penalty provision; the enforcement feature of the Florida Act is a penalty provision. The Florida Act has no provision for the injunctive proceedings pursued. An analysis of Petitioners' above argument and its implications, leads one to believe it is not made seriously. The fact that injunctive proceedings were here pursued has nothing to do with the similar character of the acts.

Section 6 imposes no previous restraint on the organization and functioning of a labor union. A careful reading will disclose it does not interfere with rights of individual members of unions to solicit others to join their organization nor limit the right of the union to solicit members, disseminate information about labor union matters, or

peaceably to assemble or petition. The requirement of the filing of an annual report is not by statute made a condition precedent to the legal existence of a labor union or to the exercise by it of the function of a labor union.

Reference is made in Petitioners' brief to pages 27-39 of brief filed in American State Federation of Labor vs. McAdory, et al, No. 588, October Term, 1944, by petitioners therein, in support of their contention that Section 6 operates to restrain and condition, and as applied in the present case to prevent, the exercise of Local No. 234 and Petitioner Hill of their civil rights. Such portion of brief in Case No. 588 is directed to Section 7 of the Alabama Bradford Act, containing provisions dissimilar to Section 6 of the Florida Act. A study of such pages, however, after deleting particular references to the specific provisions of the Bradford Act, has been made.

Petitioners contend that the effect of Section 6 and the injunction issued thereunder is to proscribe the functioning of Local No. 234, and thus deprives such union and the members thereof of their constitutional civil rights.

The cases cited by Petitioners in support of this contention deal with situations not similar at all to the instant case, enunciating principles of freedom of speech, press and assembly not to be contested in their particular applications. These cited cases are dealt with. Thomas vs. Collins, supra, is discussed below. The other cases cited are: Whitney vs. California, 274 U.S. 357; DeJonge vs. Oregon, 299 U.S. 353, and Herndon vs. Lowry, 301 U.S. 105, dealt with prosecutions under criminal syndicalism statutes. Murdock vs. Pennsylvania, 319 U.S. 105; Follette vs. Town of McCormick, 64 S. Ct. 717; Valentine vs. Christenson, 316 U.S. 52; Schneider vs. New Jersey, 308 U.S. 147; Lovell vs. Griffin, 303 U.S. 44; Thornhill vs. Alabama, 310 U.S. 88, and Hague vs. C.I.O., 307 U.S. 624, as employed under this contention of Petitioners were all directed at singular, specific statutes or ordinances which prohibited distribu-

tion of literature or public assembly or speaking without a permit, issuance of which was in the absolute discretion of an administrative officer or prohibited the exercise of a civil right in its entirety. West Virginia vs. Barnette, 319 U.S. 624, involved compulsory flag salute in a public school. State vs. Butterworth, 104 N.J.L. 549, involved only the meaning of an unlawful assembly under a particular New Jersey statute not in point.

The other case cited by Petitioners in support of this contention is Thomas vs. Collins, supra. Petitioners quote from this case, as follows:

> "As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly. Lawful public assembiles, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others."

This statement of the Court must be read in its setting. The point in Thomas vs. Collins involved the right of a labor union organizer, as defined in the Texas statute under consideration, to solicit membership in a labor union, without having previously obtained an organizer's card as required by the statute. The case and the application are not in point.

Petitioners further urge that Section 6, as applied in the present case involves a great deal more than mere registration; that it has been utilized as a device for complete prohibition against the exercise of civil rights by requiring compliance with Section 6 as a condition of such exercise and making such condition foundation for the blanket in-

junction imposed upon Local No. 234. They quote further from Thomas vs. Collins as follows:

> "If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order."

If the requirements of Section 6 amount to mere registration or identification, which we contend is true, certainly the character of the requirement of the law is not changed by the injunction issued thereunder.

Petitioners further contend that the state cannot restrict or previously restrain the exercise of the right of assembly of Local No. 234, as by the requirement of a license or exaction of a fee for the privilege, and that requirements of Section 6 constitute the equivalent of a license. Cases cited by Petitioners in support of this contention are: Lovell vs. Griffin, supra; Schneider vs. State, supra; Murdock vs. Pennsylvania, supra; all of which in this connection, dealt with imposition of a *license tax* as a prerequisite to exercising civil rights as heretofore indicated. Thornhill vs. Alabama dealt with a statute in its application to picketing. Crutch vs. Kentucky, 141 U.S. 47, and International Text Book Co. vs. Pigg, 217 U.S. 106, involved state requirements colliding with interstate commerce. Section 6 does not contemplate registration or identification as a condition to the exercise of freedom of speech or assembly; and for the further reasons set forth below the above law is not applicable to the instant case.

First, the registration requirement of Section 6 is not burdensome, but most simple in its requirements. As heretofore asserted, it is a valid regulatory measure of the state. Further, such identification requirements are not

tantamount to requirement of a license. The one dollar fee is not a *license tax*. The Supreme Court of Florida in its opinion recognized that this nominal fee is nothing more than a charge to defray cost of the service. This Court has held in several cases that a distinction is to be made between a *license tax* and a *nominal fee imposed* as a regulatory measure to defray reasonable cost in connection with the matter sought to be regulated. Attention is directed to the following excerpt from Murdock vs. Pennsylvania, supra, (page 113-114 of text):

> "The power to impose a license tax on the exercise of the freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. Lovell vs. Griffin, 303 US 444, 82 L. ed. 949, 58 S. Ct. 666; Schneider v. Irvington, 308 US 147, 84 L. ed 155, 60 S. Ct. 146, supra; Cantwell v. Connecticut, 310 US 296, 306, 84 L ed 1213, 1219, 60 S. Ct. 900, 128 ALR 1352; Largent v. Texas, 318 US 418, ante, 873, 63 S. Ct. 667; Jamison v. Texas, 318 US 413, ante, 869, 63 S. Ct. 779, supra. It was for that reason that the dissenting opinions in Jones v. Opelika, supra, stressed the nature of this type of tax. 316 US pp. 607-609, 620, 623, 86 L ed 1706, 1707, 1713, 1715, 62 S Ct. 1231, 141 ALR 514. In that case as in the present ones, we have something very different from a registration system under which those going from house to house are required to give their names, addresses and other marks of identification to the authorities. In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question."

and the following footnote in connection therewith:

> "The constitutional difference between such a regulatory measure and a tax on the exercise of a federal right has long been recognized. While a state may not exact a license tax for the privilege of carrying on interstate commerce (McGoldrick v. Berwind-White Coal

Min. Co. supra (309 US pp. 56-58, 84 L ed 576, 777, 60 S Ct 388, 128 ALR 876), it may, for example, exact a fee to defray the cost of purely local regulations in spite of the fact that those regulations incidentally affect commerce. 'So long as they do not impede the free flow of commerce and are not made the subject of regulation by Congress they are not forbidden.' Clyde Mallory Lines v. Alabama, 296 US 261, 267, 80 L ed 215, 219, 56 S Ct 194, and cases cited. And see South Carolina State Highway Dept. v. Barnwell Bros. 303 US 177, 185-188, 82 L ed 734, 738-740, 58 S Ct 510."

Since neither the requirements of Section 6 nor the one dollar charge are unreasonable, certainly the argument that a "license" or a "license tax" is involved is not tenable. Since such registration or identification required by Section 6 is so reasonable it appears Petitioners contend for and seek a status of constitutional exclusion from state police power.

> "That the State has the power to regulate labor unions with a view to protecting the public interest is . . . hardly to be doubted." Thomas vs. Collins, supra.

For the reasons stated, respondent contends the Supreme Court of Florida properly held that Section 6 was a valid regulatory measure of the state under its police power.

F. SECTIONS 4 AND 6 AND THE FIRST AMENDMENT

Should it be found by the Court that the civil rights protected by the First Amendment have as their concomitants the whole field of operation of labor organizations and their agents as contended by Petitioners, respondent submits that even in that event, such civil rights of necessity must yield to the requirements of Sections 4 and 6. The state under its police power may enact laws which interfere indirectly and to a limited extent with the right of

speech or liberty of the people where they are reasonably necessary for the protection of the general public. See Cox vs. New Hampshire, 312 U.S. 569, 576-577; Carpenters and Joiners Union vs. Ritters Cafe, 315 U.S. 722, 725-726; Cantwell vs. Connecticut, 310 U.S. 296, 306; Jamison vs. Texas, 318 U.S. 413, 417; Valentine vs. Christensen, 316 U.S. 52; Jones vs. Opelika, 316 U.S. 584, 593, 596. See also City of Manchester vs. Leiby, 117 Fed. (2d) 661, certiorari denied, 315 U.S. 562; New York vs. Zimmerman, 278 U.S. 63.

II

Petitioners' Second Specification of Error is as follows:

Sections 4 and 6 Deny Petitioners Equal Protection of the Laws in Violation of the Fourteenth Amendment.

We maintain the Supreme Court of Florida properly found Sections 4 and 6 not in contravention of the Fourteenth Amendment of the United States Constitution.

This involves Section 15 of House Bill 142 which is as follows:

> "All railway labor organizations and members thereof shall be exempt from all of the provisions of this Act as long as they are regulated by any Act or Acts of the Congress of the United States."

Also involved is the further contention of Petitioners that the act is not applicable also to associations of employers or other associations.

In defining the limitations placed upon the Legislature by the equal protection clause of the Fourteenth Amendment to the United States Constitution, this Court has held that a state may classify with reference to the evil to be prevented and, if the class discriminated against is or reasonably might be considered to define those from whom the

evil mainly is to be feared, it properly may be picked out. A lack of absolute symmetry does not matter. It is not enough to invalidate the law that others may do the same thing and go unpunished if, as a matter of fact, it is found that the danger is characteristic of the class named. Pastone vs. Pennsylvania, 232 U.S. 138, 144; New York vs. Zimmerman, 278 U.S. 63, 73. The state may direct its law against what it terms the evil as it actually exists without covering the whole field of possible abuses. New York vs. Zimmerman, supra; Central Lumber Co. vs. South Dakota, 226 U.S. 157, 160. Nor is the Legislature bound to extend its regulation to all cases which it might possibly reach. Dealing with practical exigencies, the Legislature may be guided by experience. New York vs. Zimmerman, 278 U.S. 63, 74. It is established by repeated decisions that a statute aimed at what is deemed as evil and hitting it presumably where experience shows it to be most felt is not to be upset by thinking up and enumerating other instances to which it might have been applied equally well, so far as the Court can see. That is for the Legislature to judge, unless the case in very clear. Koekee Coke Co. vs. Taylor, 234 U.S. 224, 227. The law must be deemed by the Legislature coextensive with the practical needs. Koekee Coke Co. vs. Taylor, supra.

It is noted that Section 15 exempts from its provisions only those railway labor organizations and members which are regulated by any Act or Acts of Congress. A study of the Railway Labor Act, 455 Stat. 1185, 45 U.S.C.A., Secs. 151-188, will disclose, we submit, that it was the intent of Congress in a large part, if not entirely, to preempt the field covered by the salient features of the statute. We feel, therefore, that it is clear that the Legislature of the State of Florida concluded that the class of railway employees exempted by Section 15 was adequately regulated by the Railway Labor Act and that it must be presumed that House Bill 142 is co-extensive with the practical need.

In conclusion, we wish to call the attention of the Court to its decision in National Labor Relations Board vs. Jones and Laughlin S. Corp., 301 U.S. 1, 46, wherein it was said: "We have frequently said that the legislative authority, exerted within its proper field, need not embrace all the evils within its reach. The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power. Carroll vs. Greenwich Insurance Co., 199 U.S. 401, 411."

III

Petitioners' Third Specification of Error is as follows:

Sections 4 and 6 and the Injunction Issued Thereunder Deprive Petitioners of Rights Granted and Protected Under the National Labor Relations Act in Violation of Article VI of the United States Constitution.

We maintain the Supreme Court of Florida properly found that Sections 4 and 6 of House Bill 142 and the injunctions issued thereunder do not deprive Petitioners of rights granted and protected under the National Labor Relations Act in violation of Article VI of the United States Constitution.

The Court has definitely held that the National Labor Relations Act goes no further "than to safeguard the right of employees to self-organization and to select representatives of their own choosing for collective bargaining or other mutual protection without restraint or coercion by their employer." National Labor Relations Board vs. Jones & Laughlin, 301 U.S. 1, 33. The Federal Act was not designed or intended to preclude a state from enacting legislation limited to the prohibition or regulation of the type of employee or union activity contemplated by House Bill

142, Allen-Bradley Local vs. Wisconsin E. Rel. Bd., 315 U.S. 740, 748, for indeed the authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction which the commerce clause, itself, establishes between commerce "among the several states" and the internal concerns of a state. If the contentions of the Petitioners were sound, that the National Labor Relations Act does preempt the field of labor activities and does foreclose all state action under the police power, the Federal Act would necessarily fall by reason of the limitation upon the Federal power which inheres in the constitutional grant as well as because of the explicit reservation of the Tenth Amendment. National Labor Relations Board vs. Jones & Laughlin, 301 U.S. 1, 29, 30. Furthermore, this Court has long insisted that an intention of Congress to exclude states from exerting their police power must be clearly manifested. Allen-Bradley Local vs. Wisconsin E. Rel. Bd., 315 U.S. 740, 749. We feel that this question has been concluded by the Court in its recent decision, Thomas vs. Collins, decided January 8, 1945, October Term, 1944, No. 14. See also Wisconsin Labor Relations Board vs. Fred Rueping Leather Company, 248 Wis. 473, 279 N.W. 673; Fansteel Corporation vs. Amalgamated Iron, Steel and Tin Workers, 295 Ill. App. 323, 14 N.E. (2d) 991.

The determination of the National Labor Relations Board in the Matter of Eppinger & Russell Co., 56, N.L.R.B. No. 226, is immaterial in the consideration of the question whether Section 4 of House Bill 142 is in conflict with the National Labor Relations Act. Section 4 is a state regulation to be enforced by state officials. There is nothing in it that gives an employer the right to refuse to bargain or to otherwise comply with the National Labor Relations Act, or the Board's orders thereunder, because a business agent of the employees' union has not qualified under the State Act. For the aforesaid reason, the suggestion that the Board's determination in the Matter of Eppinger & Russell

Co., decided anything concerning this question, is, in our opinion, erroneous.

In conclusion, we wish to call the attention of the Court to the fact that the record fails to show any occasion in which the Petitioners have been denied any rights under the National Labor Relations Act, or that they are engaged in Interstate Commerce,* and that Petitioners seek to bring to the attention of the Court an abstract question which this Court, we submit, will not anticipate, and which can be dealt with only as appropriately raised upon a record. Allen-Bradley Local vs. Wisconsin E. Rel. Bd., 315 U.S. 740, 746.

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* Attention is directed to footnote 3, page 38, Petitioners' Brief. A ground of Petitioners' motion to dismiss in the trial court to the effect that House Bill 142 is in conflict with the National Labor Relations Act (Record 9-10), could hardly be accepted under the stipulation (Record 17) as *proof* that members of Local No. 234 were engaged in interstate commerce. There is no allegation in Petitioners' answer in the trial court (Record 4-8) to the effect that members of Local No. 234 are engaged in interstate commerce. This is not a declaratory judgment suit; it is an injunction proceeding.

IV

Petitioners' Fourth Specification of Error is as follows:

Section 2(2), Upon Which Section 4 Is Dependent for Operation, Is So Ambiguous as to Deny Due Process of Law.

The definition of a "business agent" in Section 2(2) is clear and unequivocal, and, we submit, that the definition is in exact accord with what everyone who has any knowledge of or dealings with labor union activities understands the term to mean, particularly labor union members.

In support of that statement, we point out to the Court that the Supreme Court of Florida has considered cases

involving the duties of business agents for labor organizations (Stanton vs. Harris, 152 Fla. 736, 13 So. (2d) 17), and that the records of the Secretary of State of the State of Florida (of which the Supreme Court of Florida takes judicial notice) show that in the first year under the licensing law, 299 union business agents in Florida secured licenses. This is indicative of the fact that the term "business agent" as used in the Act was not so vague as to fail to give notice to this large number of union officials that they should secure licenses, and that the term has a well understood meaning among unions. We find also that the Kansas legislature, in Senate Bill 264, Laws of 1943, Section 1, uses the same definition of a business agent as is used in Section 2(2) of the Florida Act.

The requirement of reasonable certainty with which the Petitioners seek to assail Section 2(2) of House Bill 142, does not preclude the use of ordinary terms to express ideas which find adequate interpretation in common usage and understanding. Sproles vs. Binford, 386 U.S. 374, 393; Waters Pierce Oil Co. vs. Texas, 212 U.S. 86; Nash vs. United States, 229 U.S. 373, 377; Miller vs. Strahl, 239 U.S. 426, 434; Omaechevarria vs. Idaho, 246 U.S. 343, 348; Hygrade Provision Co. vs. Sherman, 266 U.S. 497, 502; Bandini Petroleum Co. vs. Superior Ct., 284 U.S. 8, 18.

CONCLUSION

We submit to the Court that Sections 4 and 6 do not interfere with Petitioners' freedom of speech, press or assembly, and that they are mild, modest and reasonable regulations within the police power of the state.

Sections 4 and 6 and the injunctions issued thereunder do not restrain or condition any rights granted Petitioners by Congress under the National Labor Relations Act, the said sections cover only a field left open to the states' regulation under their police power.

Sections 4 and 6 do not discriminate as between classes of labor associations, in favor of railway workers, employer associations or other associations. The classification is reasonable and rational, and seeks by preventive means to regulate classes of labor which heretofore operated in secrecy and without responsibility.

The definition of "business agent" upon whom the Act places regulations, is clear and unequivocal, and when read in connection with the commonly accepted nomenclature of labor organizations, and the remainder of House Bill 142, it is without ambiguity.

Sections 4 and 6 are easily complied with by the unions and their business agents and are designed merely to secure some official identification of labor organizations and their agents, as well as to prohibit unfit and irresponsible individuals from acting as agents for the labor organizations in the State of Florida. These regulations carry no threat to civil rights or constitutional guaranties. They are wholesome, progressive measures in keeping with changed conditions, designed to insure in a small measure, honesty and fair dealing between the union agent and the members of the union, and prospective members thereof, and between the unions' representatives and members and the public.

We earnestly submit, that the unanimous decision of the Supreme Court of the State of Florida, upholding Sections 4 and 6 is free from error and that accordingly the decision of said Court should be affirmed.

Respectfully submitted,

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APPENDIX

CHAPTER 21968—(No. 334).

HOUSE BILL NO. 142

AN ACT to Regulate the Activities and Affairs of Labor Unions, Their Officers, Agents, Members, Organizers, and Other Representatives; Making Provision for Suits and Process By and Against the Same; Requiring Certain Fees; Declaring Certain Public Policy of the State; Giving Certain Definitions and Recognizing Certain Rights as Belonging to Employees; Exempting Certain Labor Organizations from its Provisions; Providing Certain Penalties and Punishment for Violations; With a Saving Clause in Case of Unconstitutionality; and Repealing All Laws and Parts of Laws in Conflict Herewith.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Because of the activities of labor unions affecting the economic conditions of the country and the State, entering as they do into practically every business and industrial enterprise, it is the sense of the Legislature that such organizations affect the public interest and are charged with a public use. The working man, unionist or non-unionist, must be protected. The right to work is the right to live.

It is here now declared to be the policy of the State, in the exercise of its sovereign constitutional police power, to regulate the activities and affairs of labor unions, their officers, agents, organizers, and other representatives, in the manner, and to the extent hereafter set forth.

Section 2. The following terms, when used in this Act, shall have the meaning ascribed to them in this section:

(1) The term "labor organization" shall mean any organization of employees, local or subdivision thereof hav-

ing within its membership residents of the State of Florida, whether incorporated or not, organized for the purpose of dealing with employers concerning hours of employment, rate of pay, working conditions or grievances of any kind relating to employment.

(2) The term "business agent" as used herein shall mean any person, without regard to title, who shall for a pecuniary or financial consideration, act or attempt to act for any "labor organization" in (a) the issuance of membership, or authorization cards, work permits, or any other evidence of rights granted or claimed in, or by, a labor organization, or (b) in soliciting or receiving from any employer any right or privilege for employees.

. . . . . .

Section 4. No person shall be granted a license or a permit to act as a business agent in the State of Florida, (1) who has not been a citizen of and has not resided in the United States of America for a period more than ten years next prior to making application for such license or permit. (2) Who has been convicted of a felony. (3) Who is not a person of good moral character, and every person desiring to act as a business agent in the State of Florida shall before doing so obtain a license or permit by filing an application under oath therefor with the Secretary of State, accompanied by a fee of One Dollar. There shall accompany the application a statement signed by the president and secretary of the labor organization for which he proposes to act as agent, showing his authority so to do. The Secretary of State shall hold such application on file for a period of thirty days during which time any person may file objections to the issuing of such license or permit. After the expiration of the thirty-day period, regardless of whether or not any objections have been filed, the Secretary of State shall submit the application, together with all

information that he may have including any objections that may have been filed to such application to a Board to be composed of the Governor as Chairman, the Secretary of State, and the Superintendent of Education. If a majority of the Board shall find that the applicant is qualified, pursuant to the terms of this Act *and are of the opinion that the public interest requires that a license or permit should be issued to such applicant,** then the Board shall be resolution authorize the Secretary of State to issue such license or permit, same shall be for the calendar year and shall expire on December 31 of the year for which issued unless sooner surrendered, suspended, or revoked.

. . . . . .

Section 6. Every labor organization operating in the State of Florida shall make a report in writing to the Secretary of State annually on or before July first. Such report shall be filed by the secretary or business agent of such labor organization and shall be in such form as the Secretary of State may prescribe, and shall show the following facts:

(1) The name of the labor organization;

(2) The location of its office;

(3) The name and address of the president, secretary, treasurer, and business agent.

At the time of filing such report it shall be the duty of every such labor organization to pay the Secretary of State an annual fee therefor in the sum of One Dollar.

. . . . . .

Section 9. It shall be unlawful for any person: . . .

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* The Courts below judicially excised this italicized portion of House Bill 142.

(6) To act as a business agent without having obtained and possessing a valid and subsisting license or permit.

. . . . . .

Section 11. Any labor organization may maintain any action or suit in its commonly used name and shall be subject to any suit or action in its commonly used name in the same manner and to the same extent as any corporation authorized to do business in this State. All process, pleadings, and other papers in such action may be served on the president or other officer, business agent, manager or person in charge of the business of such labor organization. Judgment in such action may be enforced against the common property only, of such labor organization.

. . . . . .

Section 14. Any person or labor organization who shall violate any of the provisions of this Act, shall, upon conviction thereof, be adjudged guilty of a misdemeanor and be punished by a fine not exceeding Five Hundred Dollars ($500.00) or by imprisonment in the county jail for not to exceed six months, or by both such fine and imprisonment.

Section 15. All railway labor organizations and members thereof shall be exempt from all of the provisions of this Act as long as they are regulated by any Act or Acts of the Congress of the United States.

Section 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.